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94-88 JUN 21 1994
No. OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

JOSHUA J. ISRAEL,
Petitioner,

v.

JUDY L. ISRAEL,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS FOURTH DISTRICT

PETITION FOR WRIT OF CERTIORARI

JOSHUA J. ISRAEL
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Petitioner of Record

128 pp

QUESTION PRESENTED

DOES THE INVIDIOUS AND PURPOSEFUL DISCRIMINATION OF THE STATE, AGAINST A BLACK MAN INVOLVED IN AN INTERRACIAL MARRIAGE, VIOLATE THE EQUAL PROTECTION CLAUSE; WHEN THE STATE DOES ABDICATE ITS CONSTITUTIONAL RESPONSIBILITY, AND DOES DEPRIVE THE BLACK MAN OF PROPERTY; WHERE THE ACTUAL BIAS ON PART OF THE STATE IS TOO HIGH TO BE CONSTITUTIONALLY TOLERABLE; AND WHERE DUE PROCESS IS NOT AFFORDED THE BLACK MAN DUE TO THE TRIAL JUDGE BEING AN INTERESTED AND BIASED TRIBUNAL?

PARTIES TO THE PROCEEDING

Judy L. Israel: (n/k/a), Judy L. Cutler; the original Petitioner for dissolution of marriage in Pro Se action.

Joshua J. Israel: The original Respondent and thereafter the Counter-Petitioner.

Trial Court Judge; WAYNE C. TOWNLEY: The original Trial Court Judge who was assigned the instant case.

Trial Court Judge; DONALD D. BERNARDI: The second Trial Court Judge who was assigned this case without the acknowledgment of the Counter-Petitioner, JOSHUA J. ISRAEL.

Chief United States District Court Judge; MICHAEL H. MIHM: Did find discriminatory practices by the Trial Court of Judge Bernardi.

Fourth District
Appellate Court;

Did affirm the judgment
of the Trial Court
of Judge Bernardi
without the review
of issues and
evidence to the
contrary.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

JOSHUA J. ISRAEL,
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v.

JUDY L. ISRAEL,
Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE APPELLATE COURT OF ILLINOIS
FOURTH DISTRICT

Petitioner, JOSHUA J. ISRAEL, respectfully prays, pursuant to 28 USCA 1257, that a writ of certiorari issue to the Fourth District Appellate Court of Illinois, as a result of the judgment of the Illinois Supreme Court to deny Petitioner review, "as a matter of right," and to review the opinion of the Fourth District Appellate Court which does affirm the invidious discriminatory actions of

the Trial Court of Judge, Donald D. Bernardi, which does deprive Petitioner of property, and the opportunity to be heard in his defense.

OPINIONS BELOW

The judgments in the Illinois Supreme Court are set forth in Appendix A of this Petition; The unpublished opinion of the Fourth District Appellate Court and the other judgments of the Appellate Court are set forth in Appendix B; The final decree of the Trial Court of Judge, DONALD D. BERNARDI, is set forth in Appendix C; The Order of remand of Chief U.S. District Court Judge, MICHAEL H. MIHM, appears in Appendix D; The External Memorandum Of Law of Counsel for Respondent is set forth in Appendix E; and The Temporary Restraining Order of the Trial Court of Judge, WAYNE C. TOWNLEY is set forth in Appendix F.

JURISDICTION

The Order of the Illinois Supreme Court to deny Petitioner review of this matter was filed on the 6th day of April, 1994 (APPENDIX A), and a timely Motion to Stay the entry of Mandate pending Application For Certiorari in the United States Supreme Court was filed on the 18th day of April, 1994. This Courts' Jurisdiction is invoked under Title 28 USCA 2101(c), and Title 28 USCA 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The constitutional provision involved are Section 1, of the FOURTEENTH AMENDMENT to the United States Constitution, and Article 1, Section 2, of the State of Illinois Constitution setting fourth the following declarations of fundamental provisions:

ALL PERSONS BORN OR NATURALIZED IN THE UNITED STATES, AND SUBJECT TO THE JURISDICTION THEREOF, ARE CITIZENS OF THE UNITED STATES AND THE STATE WHEREIN THEY RESIDE. NO STATE SHALL MAKE OR ENFORCE ANY LAW WHICH SHALL ABRIDGE THE PRIVILEGES OR IMMUNITIES OF CITIZENS OF THE UNITED STATES; NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW; NOR DENY TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAWS.

ARTICLE 1, Section 2 of the State of Illinois Constitution:

No person shall be deprived of life, liberty, or property without due process of law, nor be denied the equal protection of laws.

(p. 35)

STATE STATUTES INVOLVED

ILLINOIS REVISED STATUTES, (1991), Chapter 40,

Section 502, Paragraphs (a), (b), (c), (d), (e).

Section 502 (a) To promote amicable settlement disputes between parties to a marriage attendant upon the dissolution of their marriage, the parties may enter into a written or oral agreement containing provisions for disposition of any property owned by either of them, maintenance of either of them and support, custody and visitation of their children.

(b) The terms of the agreement, except those providing for the support, custody and visitation of children, are binding upon the court unless it finds, after considering the economic circumstances of the parties and any other relevant evidence produced by the parties, on their own motion or on request of the court, that the agreement is unconscionable.

(c) If the court finds the agreement unconscionable, it may request the parties to submit a revised agreement or upon hearing, may make orders for the disposition of property, maintenance, child support and other matters.

(d) Unless the agreement provides to the contrary, its terms shall be set forth in the judgment, and the parties shall be ordered to perform under such

terms, or if the agreement provides that its terms shall not be set forth in the judgment, the judgment shall identify the agreement and state that the court has approved its terms.

(e) Terms of the agreement set forth in the judgment are enforceable by all remedies available for enforcement of a judgment, including contempt, and are enforceable as contract terms.

(f) Except for terms concerning the support, custody or visitation of children, the judgment may expressly preclude or limit modification of terms set forth in the judgment if the agreement so provides. Otherwise, terms of an agreement set forth in the judgment are automatically modified by modification of the judgment.

(p. 26)

ILLINOIS REVISED STATUTES, (1991), Chapter 40, Section 501, paragraphs (a)(2)(i).

501(a) Either party may move for:

(2) a temporary restraining order or preliminary injunction, accompanied by affidavit showing a factual basis for any of the following relief:

(i) restraining any person transferring, encumbering, concealing, or otherwise disposing of any property except in the usual course of business or for the necessities of life, and, if so restrained, requiring him to notify the moving party and his attorney of any proposed extraordinary expenditures made after the order is issued.

(p. 27)

STATEMENT OF THE CASE

The Respondent, JUDY L. ISRAEL, (n/k/a) JUDY L. CUTLER, acting pro se, did commence this dissolution proceeding against the Petitioner, JOSHUA J. ISRAEL, on February 4, 1991 (C. 13), in the Circuit Court of the Eleventh Judicial Circuit, McLean County, Illinois, and the Honorable, WAYNE C. TOWNLEY, was the appointed Trial Court Judge to preside over the proceedings for final determination thereon (C. 1, R. Vol. II, p. 1).

After securing the signature of Petitioner on the marital settlement agreement (C. 16), Respondent did file her original irreconcilable differences petition with the Trial Court on the 4th day of February, 1991 (C. 13-16). Immediately thereafter, Respondent then did secure the signature of Petitioner on a consent to default on the 6th day

of February, 1991 (C. 18), and then on February 7, 1991, Respondent did file an amendment to her original petition, to the new dissolution grounds of mental cruelty, without sending notice of this amendment to Petitioner (C. 17, R. Vol. II, p. 2-4).

On the 15th day of February, 1991, Petitioner sought the counsel of, Alice F. Smalley (C. 20). During the hearing, on March 5. 1991, and after Respondent did fail to rebut the Trial Court's presumption of fraud and undue influence, and because the dissolution petition and process was insufficient (R. Vol. II, p. 2-3), the Trial Court of Judge Townley did dismiss the petitions (R. Vol. II, p. 2-3), and did set aside the marital settlement agreement (R. Vol. III, p.23), and Respondent was ordered to file an answer to the counterpetition of Petitioner (C. 21-25, R. Vol. II, p. 4-5).

The answer filed by Respondent on the 6th day of March, 1991, did clearly admit the grounds of mental cruelty, but did deny the grounds of adultery (C. 32-34); further, on the 4th day of April, 1991, counsel for Respondent, Jerry N. Raymer, did enter his appearance as counsel for Respondent.

On the 24th day of May, 1991 (C. 36), during the hearing to secure a temporary restraining order on the proceeds from the sale of the marital realty, and after Petitioner did establish a clear identifiable right which does need the Trial Courts' protection, and that Petitioner will likely prevail on the merits (R. Vol. III, p. 2-24), the Trial Court of Judge Townley did secure 50% of the proceeds from the sale of the marital realty into escrow account (C. 42) until final settlement of the dissolution matter (R. Vol. III, p. 25-27, Appendix F).

After a substitution of counsel for Petitioner was entered into the record (C. 43-44), Attorney, James D. Bass, proceeded to hearing on contested dissolution grounds on the 15th day of October, 1991, (C. 45), and the Trial Court of Judge Townley did render judgment on the Respondents' clearly admitted grounds of adultery (C. 48-49).

Thereafter, without the acknowledgment of Petitioner (C. 196), the dissolution case was transferred to the Trial Court of Judge, DONALD D. BERNARDI, for the all issues hearing. Further, after Attorney, James D. Bass, did set hearing for all issues on the 16th day of January, 1992, Attorney Bass did move to contested hearing to withdraw as counsel for Petitioner on the 10th day of January, 1992 (C. 95). After allowing counsel to withdraw (C. 99-100), against the objection of Petitioner (C. 87-95), Petitioner was then

compelled to represent himself during the remainder of the dissolution proceedings as a result being financially unable to obtain other counsel (C. 146-147).

In misnomer, and on the 5th day of May, 1992, Petitioner attempted to remove the divorce proceedings to Federal Jurisdiction on the claim of a deprivation of constitutional rights (C. 181-184); however, after Chief U. S. District Court Judge, MICHAEL M. MIHN, did find that Petitioner could file a separate claim of discriminatory practices against the actions of the state (C. 228-229), the removal was denied and case remanded (C. 225).

During continuance hearing on the 13th day of August, 1992, the Trial Court of Judge Bernardi did order the preparation of summary judgment motions (C. 5, C. 382) for the hearing set on the 24th day of September, 1993 (C. 272-346); however,

during said hearing, the Trial Court did deny Petitioners' motion to compel subpoenaed evidences (C. 5), did deny Petitioners' Motion for Summary Judgment asserting the doctrine of equity estoppel, and estoppel by representation (C. 383). The Trial Court did also conceal the identity of the court reporter during the summary judgment hearing (C. 5, entry 9-24-92), and then the Trial Court of Judge Bernardi did change the nature of the hearing to re-establish the validity of the marital settlement agreement, that was set aside by the Trial Court of Judge Townley, for another hearing thereon (C. 382-385). In addition, Petitioner was also ordered by the Trial Court to prepare and deliver to the Trial Court a dissolution affidavit (C. 270, C. 349-378); however, Respondent was not required to file any financial statement or dissolution affidavit (C. 452), and the Trial Court of Judge

Bernardi did deny the objection of Respondent to this procedure (C. 6, R. Vol. IV, p. 5-6).

During hearing on all issues on the 10th day of December, 1992, the Trial Court of Judge Bernardi again did deny Petitioners' estoppel defense, (C. 6, C. 272-274, R. Vol. IV, p. 2-6). The Trial Court then did not find that the settlement agreement was presumptively fraudulent, and did not apply the proper standard of analysis for rebuttable presumptions of undue influence (R. Vol. IV, p. 7-8). The Trial Court did conveniently change the legal issues and the nature of the hearing to the confusion of Petitioner (R. Vol. IV, p. 18-20, p. 33-35, p. 95-102), and further did restrict Petitioners' cross examination of Respondent (R. Vol. IV, p. 45-46).

On the 18th day of February, 1993, during hearing for additional evidence

on fraud and duress, as ordered by the Trial Court of Judge Bernardi (C. 489-490). the Trial Court did prevent Petitioner from bringing forth his necessary evidence of fraud and undue influence (R. Vol. V, p. 11), and further restricted Petitioners' cross examination of Respondent (R. Vol. V, p. 41-44, p. 46-48, p. 61, p. 66-67).

Final Judgment was rendered by the Trial Court of Judge Bernardi on the 8th day of April, 1993, and Decree was entered dissolving the temporary restraining order that was previously obtained by Petitioner, and did declare the 50% realty proceeds as the property of Respondent. Further, the Trial Court additionally did decree that the existing property division between the parties is to be maintained as the division of the property between the parties (C. 534-535).

After the Notice of Appeal was filed on the 7th day of May, 1993, and after

Petitioners' Motion For "Status Quo" Stay of Judgment was denied on the 28th day of May, 1993, the Fourth District Appellate Court did allow Respondent to seek hearing before the Trial Court of Judge Bernardi so as to Supplement the Record on Appeal on August 3, 1993 (C. 557).

During the hearing before the Trial Court of Judge Bernardi, on the 14th day of June, 1993, with counsel for Respondent present (C. 8), the Trial Court did disqualify himself from hearing the matter due to his current relationship and his past business relationship with counsel for Respondent (Appendix F). Thereafter the hearing was held before Trial Court Judge, WILLIAM DECARDY, on the 15th day of June, 1993 (C. 8).

On appeal before the Fourth District Appellate Court, on the 26th day of July, 1993, and in his opening brief, Petitioner did raise the issues of the deprivation

of substantial rights guaranteed Petitioner being enough to warrant a reversal judgment, the issue concerning the propriety of the decisions reached by the Trial Court of Judge Townley, the issue of the improper procedure of rebuttable presumptions of undue influence made by the Trial Court of Judge Bernardi, and the issue of the clear admissions made by Respondent during cross examination clearly demonstrates that the marital settlement agreement does fail to conform to the rules of law governing the construction of contracts (Appellants' Brief p. 10-12).

Further, due to the brief of Respondent failing to conform to the Illinois Supreme Court Rules for briefs, and failing to dispute the plain, clear, and undisputable evidence of Petitioner, or to respond to the authorities of Petitioner (Appendix B, p. 5), a timely Motion To Strike Brief of Respondent was filed before the Appellate

Court, with the reply brief of Petitioner, on the 17th day of September, 1993; however, counsel for Respondent did file an external memorandum of law requesting that Respondents' brief still be considered (Appendix E, page 2).

Furthermore, while unsupported by any evidence to sustain his allegations, counsel for Respondent did additionally request of the Appellate Court to take sanctions against Petitioner due to Petitioners' substantial demonstration, in the reply brief, that the Trial Court of Judge Bernardi was an interested and biased tribunal and did deprive Petitioner of a fair trial and a fair decision (Appendix E, page 7).

On the 22nd day of September, 1993, the Appellate Court did deny the Motion to Strike Brief of Respondent by Petitioner, and after review of the Judgment, on the 17th day of November, 1993, the Fourth

District Appellate Court did affirm the Decree as set forth by the Trial Court of Judge Bernardi; however, the Appellate Court did not pass upon all questions properly before it concerning the validity of the procedure and the judgments rendered by the Trial Court of Judge, WAYNE C. TOWNLEY, and the deprivation of substantial rights that are guaranteed Respondent by law being enough to warrant a reversal judgment (Appellants' Brief p. 10-12).

The Appellate Court also made many findings that are unsupported by the evidence, when the Appellate Court found that Petitioner chose not to be represented by counsel (C. 146-147), when finding that Petitioner said he understood the settlement agreement (R. Vol. III, p. 16-17), when finding that there was no fraud or undue influence (C. 17, C. 32-33, C. 49), when finding that the agreement was valid and is sustained by contract law (R. Vol. IV,

p. 38-40, p. 58), when finding the Respondent did pay the debts of Petitioner (C. 349-378), and when finding that Petitioner did urge Respondent to file for divorce (R. Vol. II, p. 2-5).

After a timely Petition For Rehearing was filed on the 7th day of December, 1993, demonstrating that Petitioner was not afforded any opportunity to be heard on all issues on appeal, the Appellate Court did deny the Petition on the 22nd day of December, 1993.

Thereafter, the affidavit of intent to seek review was filed on the 27th day of December, 1993, and under the jurisdiction of Illinois Supreme Court Rule 317, for Leave To Appeal "As A Matter Of Right," Petitioner did file his petition with Clerk of Illinois Supreme Court on the 27th day of January, 1994.

The Petition For Appeal "As A Matter Of Right" did set forth the question of

whether the Petitioner was deprived of his interest in marital property without the fundamental requisites under the Fourteenth Amendment to the United States Constitution, when the lower Courts did exceeded the boundary of its' constitutional prescribed jurisdiction to apply the law arbitrarily and capriciously against Petitioner, in disregard of its' duty, and in disregard of the plain clear and undisputable evidence as presented by the record; however, the petition was denied by the Illinois Supreme Court on the 6th day of April, 1994, and on the 11th day of April, 1994, Petitioner did file his Affidavit Of Intent To Seek Review with Clerk of Illinois Supreme Court.

Upon direction by Clerk of Illinois Supreme Court, and on the 18th day of April, 1994, Petitioner did file his Motion To Stay The Entry Of Mandate to seek an Application For Certiorari to the United

States Supreme Court.

Thereafter, the Illinois Supreme Court did deny the Motion To Stay Entry Of Mandate on the 27th day of April, 1994, and Mandate was entered on the 9th day of May, 1994.

REASONS FOR GRANTING THE WRIT

A.

As a result of the judgment of the Illinois Supreme Court to deny Petitioner the statutory right to Leave To Appeal, "As A Matter Of Right," under jurisdiction of Illinois Supreme Court Rule, 317, and thereby has not passed upon the fereral question presented, and further has deprived Petitioner of his Motion To Stay The Entry Of Mandate while seeking Application For Certiorari before this Court (Appendix A), the basic constitutional issues of obvious importance regarding whether the Illinois Supreme Court has sanctioned the departure from the accepted and usual course of judicial proceedings by the lower Courts, and the question of whether Petitioner has been deprived of the constitutional safeguard of equal protection of the laws and due process of law is hereby before

this Court in the interests of justice.

In the instant case, Petitioner will demonstrate that certiorari is applied for as a result of the intentional and purposeful discriminatory actions on part of the Trial Court to take property from Petitioner without the constitutional safeguard afforded Petitioner. In addition, with Petitioner being a Black American Citizen, and belonging to a protected class of citizenship, and thereby requiring the strict scrutiny review of this Court Norris v. State of Alabama, (1935), 294 U.S. 587, 55 S. Ct. 579 at 580-581, Petitioner does further recognize his burden of the production of extrinsic evidence setting fourth the discriminatory design to favor one individual over another Snowden v. Hughes, (1944), 321 U.S. 1, 64 S. Ct. 397 at 401. Further, Petitioner will also demonstrate that the Trial Court and the Appellate Court has invidiously and

purposely discriminated against Petitioner, by the arbitrary and capricious administration of a statute, fair and neutral on its face Washington v. Davis, (1976), 426 U.S. 228, 96 S. Ct. 2040 at 2047-2048.

The statute in question herewith concerns section 502 of the Illinois Marriage & Dissolution of Marriage Act regarding marital settlement agreements between parties to a marriage attendant upon the dissolution of their marriage, and paragraph (c) does set forth the following declarations of public policy:

> If the Court finds the agreement unconscionable, it may request the parties to submit a revised agreement or upon hearing, may make orders for the disposition of property, maintenance, child support and other matters.

By authority of Section 502(c), and after hearing and argument by counsel for both parties, the Trial Court of Judge, WANE C. TOWNLEY, did find that the marital

settlement agreement was unconscionable, the Trial Court did set the agreement aside, and did prepare for the disposition of property under the additional authority of Section 501,(a)(2)(i) of the Illinois Marriage & Dissolution Of Marriage Act (R. Vol. III, p. 17-27).

Section 501,(a)(2)(i) of the Illinois Marriage & Dissolution Of Marriage Act does set forth the following declarations of public policy:

> 501(a) Either party may move for:
>
> (2) a temporary restraining order or preliminary injunction, accompanied by affidavit showing a factual basis for any of the following relief:
>
> (i) restraining any person transferring, encumbering, concealing, or otherwise disposing of any property except in the usual course of business or for the necessities of life, and, if so restrained, requiring him to notify the moving party and his attorney of any proposed extraordinary expenditures made after the order is issued.

Therefore, after Petitioner did demonstrate the need for equal protection

of the laws (R. Vol. II, p. 3), that Petitioner will likely prevail on the merits of this case (R. Vol. III, p. 17-27), and to protect Petitioners' interest in marital property fraudulently obtained by Respondent (R. Vol. III, p. 17-18) the Trial Court of Judge Townley did also secure 50% of the net proceeds from the sale of the marital realty in escrow account for future determination thereon (R. Vol. III, p. 17-27), (Appendix F), In Re Marriage of Joerger, (4th Dist., 1991), 221 Ill.App.3d 400, at 404-405, 581 N.E.2d 1219 at 1224.

The controversy herewith derives from the procedural due process of the Trial Court of Judge, DONALD D. BERNARDI, after the case was transferred from the jurisdiction of the Trial Court of Judge, WAYNE C. TOWNLEY, without the acknowledgment or the approval of Petitioner (C. 196). As a result of this case transfer, and in his opening appellate brief, Petitioner

has raised the issue of being deprived of substantial rights guaranteed him as a result of his case being transferred from the Trial Court of Judge Townley to the Trial Court of Judge Bernardi (Appellants' Brief p. 27).

Further, to equally protect a party to an action in the said situation, the Illinois Supreme Court has precedented that a "full hearing" required by due process contemplates that all evidence should be submitted before a single judge who may see the witness, weigh their testimony, and determine their credibility; therefore, the transfer of the instant case, without acknowledgment, was a deprivation of Petitioners' right to a "full hearing," in full accordance with the accepted practice and policy of the laws of the state of Illinois Mills v. Ehler, (Illinois Supreme Court 1950), 407 Ill. 602, at 611-612, 95 N.E.2d 848, at

853.

As a result of said deprivation, this Court has declared that common-law rules enunciated by state courts in judicial opinions are part of state law, and the unwarranted denial of such common-law rules may result in the denial of rights guaranteed by the Fourteenth Amendment Shelley v. Kraemer, (1948), 334 U.S. 1, 68 S. Ct. 836 at 844. Therefore, by being deprived of the aforesaid "full hearing" common-law policy of the state of Illinois, one clearly defined element of intentional and purposeful discrimination in violation of the equal protection clause of the Fourteenth Amendment is thereby clearly set forth Hartford Steam Broiler I. & Ins Co. v. Harrison, (1937), 301 U.S. 459, 57 S. Ct. 838 at 839-840.

To proceed further, Petitioner has also brought forth the fundamental error of being compelled to represent himself

after the Trial Court did allow counsel for Petitioner to withdraw, against the objection of Petitioner, when the Trial Court was fully aware that Petitioner was financially unable to obtain other counsel (C. 146-147). As a result of this deprivation, the First District Appellate Court of Illinois has precedented, "that the right of a litigant to be represented by counsel is fundamental. This right exists in civil as well as in criminal cases and is part of the process of law guaranteed by the constitution. This right is a valuable one, the unwarranted denial of which is held to be fundamental error" In Re Marriage Of Fahy, (1st Dist. 1991), 208 Ill.App.3d 677, 567 N.E.2d 552, at 558. Therefore, because Petitioner has not been afforded this established common-law policy of the State of Illinois, Petitioner thereby has been deprived of his fundamental right of access to the

Courts, in addition to the equal protection of the laws of the State as mandated by the Fourteenth Amendment Hartford Steam Broiler I. & Ins Co. v. Harrison, (1937), 301 U.S. 459, 57 S. Ct. 838 at 839-840..

In addition, Petitioner did urge before the Appellate Court that the Trial Court of Judge Bernardi created fundamental error in taking the property assets from Petitioners' preliminary injunction order without the fundamental requisites of procedural due process; when Petitioner was not afforded the protection of his day in court due to the procedure of the Trial Court being arbitrary and capricious (R. Vol. IV, p. 2-8), due to the refusal of Trial Court to inquire upon Petitioners' estoppel issues (C. 272-279), or to afford Petitioner any opportunity to be heard thereon (R. Vol. IV, p 2-6); and when Petitioner was deprived of the benefit of an orderly proceeding adapted to the

nature of the case (C. 382-385). Whereby, the Second District Appellate Court of Illinois has established the precedent that "The guarantee of due process of law requires that every man shall have protection of his day in court and the benefit of the general law, a law which hears before it condemns, which proceeds not arbitrarily or capriciously, but upon inquiry, and renders judgment only after trial, so that every citizen shall hold his life, liberty, property, and immunities under the general rules which govern society. The general elements of due process of law are notice and an opportunity to be heard and to defend in an orderly proceeding adapted to the nature of the case;" further, the Second District has also established that the fundamental requisite of procedural due process is that every man shall have the protection of his day in court and the benefit of

an orderly proceeding according to the general law or established rules; and that the hearing shall not be arbitrary, but rather shall afford him the opportunity to be heard in his defense, and shall assure him an inquiry on the issues of the case, wherein judgment is rendered only after trial. There must be an intrinsic fairness of procedure by which any judgment, order or decree is rendered. This is essential to the untainted administration of justice, "the most cherished aspect of our judicial system" Pettigrew v. National Accounting Systems, Inc., (2nd Dist. 1966), 67 Ill.App.2d 344, at 350-351, 213 N.E.2d 778, at 781-782

The Illinois Supreme Court has also established the president that judicial proceedings are governed by the fundamental principles of due process of law [citation]. In such proceedings the object of this constitutional safeguard is to preserve

the personal and property rights of a person against arbitrary actions [citation]. Due process of law presupposes a fair and impartial hearing before a fair and impartial tribunal [citation]. Yet the guarantee of a fair hearing would be a mockery if the process by which the tribunal arrived at its decision were itself arbitrary and capricious Walker v. State Board Of Elections, 65 Ill.2d 543, at 563, 359 N.E.2d 113, at 123.

Tested by these standards as set forth by the Courts of Illinois, the Trial Court of Judge Bernardi did utilize an arbitrary process to reach his decision, and did arbitrarily and capriciously take property from Petitioner in disregard of ARTICLE 1, Section 2, of the State of Illinois Constitution setting forth the following declarations of fundamental rights:

> No person shall be deprived of life, liberty, or property without due process of law, nor be denied

the equal protection of laws.

Because Petitioners' estoppel defense was denied by the Trial Court of Judge Bernardi without the opportunity to present his case fully and fairly (R. Vol. IV, p. 2-8), in addition to the Trial Court depriving Petitioner of his legal counsel, and thereby compelling Petitioner to begin research in the law and to represent himself (C. 146-147), plus the deprivation of "full hearing" requirements afforded by due process (C. 196), the Illinois Supreme Court has precedented that the an Appellate Court could not properly affirm such a judgment due to the deprivation of fundamental rights; therefore, the deprivation of substantial rights guaranteed an appellant by law is enough to warrant a reversal judgment Burstein v. Millikin Trust Co., (Supreme Court of Illinois, 1954), 2 Ill.2d 243 at 245-246, 118 N.E.2d 293, at 294.

Due to the well settled issue in this Court that: "A State acts by its legislative, its executive, or its judicial authorities, and that a State can act in no other way" Shelley v. Kraemer, (1948), 334 U.S. 1, 68 S. Ct. 836 at 842-843, the aforesaid actions of the State does give rise to the substantial question of whether the state judiciary has abdicated its constitutional responsibility for the primary purpose to invidiously discriminate against Petitioner, and to further deprive Petitioner of property without any of the constitutional safeguards that are to be afforded citizens of the United States Shelley v. Kraemer, (1948), 334 U.S. 1, 68 S. Ct. 836 at 842-843.

As a result of said discrimination, Petitioner must depend upon the commandments of this Court which does declare that States may not abdicate its responsibilities by either ignoring them or by merely failing

to discharge them whatever the motive may be Burton v. Wilmington Parking Authority, (1961), 365 U.S. 725, 81 S. Ct. 856 at 861. Further, because federal constitutional rights have been asserted before the Illinois Courts, and thereafter the federal rights have been denied Petitioner, this Court has declared that it is a common practice for this Court to inquire whether the deprivation of the federal right has occurred in substance and effect, and if so, the evidence must be examined for determination thereon Norris v. State Of Alabama, (1935), 294 U.S. 587, 55 S. Ct. 579 at 580-581.

Further, because the State of Illinois has not established its' intent to generally enforce the aforesaid deprivations upon others, and due to the aforesaid actions being a clear departure from the accepted and usual course of judicial proceedings in the State of Illinois, this Court has

declared that if actions as aforesaid are to be sustained, the action must rationally further some legitimate governmental interest. In addition, this Court has further declared that if the constitutional concept of equal protection is to mean anything, it must at the very least mean that the states desire to harm a politically unpopular citizen of the United States cannot constitute the advancement of a legitimate governmental purpose United States Department of Agriculture v. Moreno, (1973), 413 U.S. 528, 93 S. Ct. 2821 at 2826.

B.

Due to the arbitrary process of the Trial Court of Judge Bernardi, so as to enforce the provisions of Respondents' marital settlement agreement upon Petitioner (Appendix D), after the Trial Court of Judge Townley had tried and found the settlement agreement to be unconscionable (R. Vol. III, p. 23), the substantial question does arise hereby concerning whether such enforcement is the result of invidious and purposeful discrimination due to the actual bias on part of the Trial Court being too high to be constitutionally tolerable Withrow v. Larkin, (1975), 421 U.S. 35, 95 S. Ct. 1456 at 1464; In addition, this Court has declared that when the effect of an action is to deny rights subject to the protection of the Fourteenth Amendment, it is the obligation of this Court to enforce the

constitutional commands Shelley v. Kraemer, (1948), 334 U.S. 1, 68 s. Ct. 836 at 843-844.

Therefore, to bring forward such deprivations, Petitioner has asserted before the Fourth District Appellate Court that the First District has precedented the Illinois common-law policy that when a property settlement is manifestly unfair and unconscionable, when considering the relative circumstances and station in life of the party, the settlement should be set aside because of extreme misrepresentation, fraud, undue influence, and coercion, practiced upon the party by the adverse party, counsel for adverse party, the Trial Court, and the parties own counsel. In Re Marriage Of Moran, (1st Dist. 1985), 136 Ill.App.3d 331, at 341-342, 483 N.E.2d 580, at 584-587.

Thereby on appeal, the Fourth District Appellate Court has precedented the

common-law policy that an Appellate Court is justified in disturbing the judgment of Trial Court only when Appellate Court finds that discretion vested in the Trial Court has been abused In Re Marriage Of McMahan, (4th Dist. 1980), 82 Ill.App.3d 1126, at 1134, 403 N.E.2d 730, at 736. In addition, the Second District Appellate Court of Illinois has precedented the policy that the constitutionally prescribed duty of the Appellate Court is to review cases not only as to law, but also as to facts, to also review the evidence, and to reverse judgments of the Trial Court when Appellate Court finds the judgments clearly against the manifest weight of the evidence. Manifest weight means: clearly evident, plain or undisputable. Elgin Lumber & Supply Co. v. Malenius, (2nd Dist. 1967), 90 Ill.App.2d 90, at 97, 232 N.E.2d 319, at 323.

Further, to demonstrate the arbitrary

and capricious application of Illinois law by the Fourth District Appellate Court, the opening brief of Petitioner brought forth undisputed evidence that the Trial Court of Judge Townley did preside over the merits of the settlement agreement (R. Vol. II, p. 2-5, R. Vol. III, p. 23); in addition, as a result of the confidential relationship existing between the parties, and due to Respondent benefiting therefrom (R. Vol. III, p. 17), the Illinois common-law policy is to strictly scrutinize the settlement agreement by compelling the Trial Court to make the presumption of fraud and undue influence, and to reach a legal conclusion in the absence of clear, convincing, and unmistakable evidence to the contrary Franciscan Sisters Health Care Corp. v. Dean, (Illinois Supreme Court, 1983), 95 Ill.2d 452 at 460-465, 448 N.E.2d 872 at 877-878.

As a result of the aforesaid procedure

being well settled in Illinois law, the Trial Court of Judge Townley is justified in its procedure of rebuttable presumptions of undue influence to find in favor of Petitioner, as a matter of law, due to the failure of Respondent to rebut the presumptions (R. Vol. II, p. 2-5, R. Vol. III, p. 25-27). In addition, this Court has declared that rebuttable presumptions rests upon grounds of expediency or policy so compelling in character as to override the generally fundamental requirement of our system of law that questions of fact must be resolved according to proof United States v. Provident Trust Co., (1934), 291 U.S. 272, 54 S.Ct. 389 at 391.

Further, the Illinois Supreme Court does support the procedure and the judgments of the Trial Court of Judge Townley by its precedent stating that, as a general rule, the Courts of Illinois will not enforce a private agreement that is contrary

to public policy, and that no one may lawfully do that which has a tendency to injure the public welfare O'hara v. Ahlgren, (Illinois Supreme Court, 1989), 127 Ill.2d 333 at 341-342, 537 N.E.2d 730 at 734-737.

Additional arbitrary application of law by the Fourth District Appellate Court is demonstrated by the position of Petitioner turning for the worse during the course of this litigation, warranting the assertion of Petitioners' estoppel defense, so that Respondent will not benefit from her wrongdoing In Re Marriage Of Webber, (4th Dist. 1989), 191 Ill.App.3d 327, at 331, 547 N.E.2d 749, at 751, (C. 272-279), and that Petitioner's estoppel defense was arbitrarily and capriciously refused by the Trial Court of Judge Bernardi, without providing Petitioner with the opportunity to present his case fully and fairly (C. 6, C. 473-475, R.

Vol. IV, p. 2-8).

In addition, the Appellate Court has also ignored the fact that the Trial Court of Judge Bernardi did also fail to strictly scrutinize the marital settlement agreement transaction (R. Vol. IV, p. 6-8), and that said Trial Court did fail to follow the direction of the Illinois Supreme Court in the Franciscan Sisters precedent which did establish the analysis procedure of rebuttable presumptions of undue influence for Trial Courts to follow without modification (R. Vol. IV, p. 7-8). Franciscan Sisters Health Care Corp. v. Dean, (Illinois Supreme Court, 1983), 95 Ill.2d 452 at 460-465, 448 N.E.2d 872 at 877-878.

Further, while unsupported by the undisputed evidence, and by further arbitrary actions, the Fourth District Appellate Court additionally found that Petitioner did say that he understood the

settlement agreement at the time he did sign the settlement agreement (R. Vol. III, p. 16), that Respondent did pay the debts of Petitioner C. 349-378), and that Petitioner did urge Respondent to file for divorce (R. Vol. II, p. 2-5). The Appellate Court has also arbitrarily found the item of spousal maintenance as a substantial consideration item to further substantiate the settlement agreement; however, the Fourth District Appellate Court did ignore the precedent of the First District Appellate Court, as urged and argued by Petitioner, that an offer, an acceptance, and consideration are the basic elements of a contract, and that if consideration is not bargained for, it is not consideration O'niell v. Delaney, (1st Dist. 1980), 92 Ill.App.3d 292, at 297-299, 415 N.E.2d 1260, at 1265-1266.

Further, the Appellate Court did also ignore its own common-law precedent,

as asserted by Petitioner, that marital settlement agreements are to be construed by applying the same rules as those governing the construction of contracts In Re Marriage of Sherrick, (4th Dist., 1991), 214 Ill.App.3d 92 at 95-96, 573 N.E.2d 335, at 338.

The Fourth District Appellate Court also ignored evidence concerning the clear admission made by Respondent during cross examination, stating that there was "no bargaining" with Petitioner during the construction of the settlement agreement, and that there was "no consideration" offered to Petitioner in the procurement of the settlement agreement transaction (R. Vol. IV, p. 38-39, R. Vol. V, p. 45-48). These facts clearly demonstrate that the settlement agreement does not square with the Illinois common-law rules for the construction of contracts O'neill v. Delaney, (1st Dist., 1980), 92 Ill.App.3d

292, at 297-299, 415 N.E.2d 1260, at 1265-1266.

Therefore, to ignore the the sufficiency of this evidence that is established by the precedent of the Fourth Districts Appellate Court declaring that, since a clear admission of a material fact made by a party or her attorney during cross examination is binding on the party, no additional evidence need be presented Stone v. City of Arcola, (4th Dist. 1989), 181 Ill.App.3d 513, at 532, 536 N.E.2d 1329, at 1341, the Fourth District Appellate Court has applied the law arbitrarily and capriciously against Petitioner, in disregard of the undisputed evidence, giving rise to the substantial question of intentional and purposeful discrimination Shelley v. Kraemer, (1948), 334 U.S. 1, 68 S. Ct. 836, at 841-845.

With the disregard of the aforesaid urged and argued undisputed evidence, plus

the Appellate Court's exclusion of all evidence procured in the Trial Court of Judge Townley, and because the Appellate Court should have proceed to factual determination of this case on the facts wrongfully excluded by the Trial Court of Judge Bernardi, this Appellate action does raise the substantial question of fairness and the deprivation of equal protection of the laws of Illinois by the Fourth District Appellate Court Goldblatt Bros. Inc. v. Addison Green Meadows Inc., 8 Ill.App.3d 490, at 502-503, 290 N.E.2d 715, at 723.

Therefore, the aforesaid manner used by the Trial Court of Judge Bernardi and the Fourth District Appellate Court in reaching its decision does demonstrate that the State judiciary has abdicated its constitutional responsibility to invidiously and purposely discriminate against the Petitioner, and to further

deprive Petitioner of his interest in marital property, by applying the law arbitrarily and capriciously against Petitioner, in disregard of its common-law policies, and in disregard of the clearly demonstrated and undisputed evidence as presented by the record Shelley v. Kraemer, (1948), 334 U.S. 1, 68 s. Ct. 836, at 841-845.

In addition, by depriving Petitioner of the substantive right to acquire property at the time of dissolution of marriage, this Court has declared that "all citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property" Shelley v. Kraemer, (1948), 334 U.S. 1, 68 s. Ct. 836 at 841.

Due to the aforesaid judicial action being contrary to the untainted

administration of justice, this Court has declared that no Court may effectively abdicate its responsibilities by either ignoring them or by merely failing to discharge them whatever the motive may be Burton v. Wilmington Parking Authority, (1961), 365 U.S. 725, 81 S. Ct. 856, at 861.

This Court has additionally declared that among cases in which experience teaches that the probability of actual bias on part of a judge is too high to be constitutionally tolerable are those in which the tribunal has a pecuniary interest in the outcome of the proceeding and in which the tribunal has been the target of personal criticism from the party before him Withrow v. Larkin, (1975), 421 U.S. 35, 95 S. Ct. 1456, at 1464.

As a result of the actions of the Trial Court in abdicating its constitutional responsibility in addition to the invidious

discrimination against Petitioner, the personal criticism directed at the Trial Court of Judge Bernardi by Petitioner, in his petition to remove the instant case from state jurisdiction to federal jurisdiction, does subject the Trial Court to personal criticism to the effect of certain constitutional and civil rights violations (Appendix D, page 5). In addition, due to the petition being a misnomer, and with the case being remanded back to the State Trial Court, Chief United States District Court Judge, MICHAEL M. MIHM, did additionally affirm the possibility of discriminatory practices by the Trial Court of Judge Bernardi in his Order Of Remand, and as a result, the Trial Court is again the subject of personal criticism from the federal civil actions of Petitioner (Appendix D, page 5), Taylor v. Hayes, (1974), 418 U.S. 488, 94 S. Ct. 2697, at 2702-2705.

After the case was remanded the Trial Court of Judge Bernardi then became embroiled in a running controversy with Petitioner, and thereafter did display an unfavorable personal attitude to Petitioner, in addition to demonstrating his favoritism for Respondent (C. 381-385, C. 452-456, R. Vol. IV, p. 2-103, R. Vol. V, p. 2-71). Thereby, this Court has declared that where a Trial Judge became embroiled in a running controversy with a party to an action, and there was a mounting display of unfavorable personal attitude by the Trial Judge toward the party, and as a result of the unseemly conduct that left personal stings; another judge should have been substituted for the Trial Judge Taylor v. Hayes, (1974), 418 U.S. 488, 94 S. Ct. 2697, at 2702-2705.

Further, counsel for Respondent did additionally request of the Fourth District Appellate Court to take sanctions against

Petitioner for demonstrating in his reply brief that the Trial Court of Judge Bernardi was an interested and biased tribunal, without the entry of any evidence to support his reasons for such request (Appendix E). Thereafter, the aforesaid manner utilized by the Appellate Court in affirming the judgment of the Trial Court of Judge Bernardi, does give rise to the high probability that the Appellate Court did take sanctions against Petitioner without any support of evidence, and by the procedure of a trial de novo in the Appellate Court. However, trials de novo in the Appellate Court have been abolished in the State of Illinois since the year 1964 Thanopoulos v. Pickens, (1st Dist. 1980), 87 Ill.App.3d 906, at 909, 409 N.E.2d 477, at 480.

C.

Having demonstrated the actual bias on part of the Trial Court of Judge Bernardi as being too high to be constitutionally tolerable because of personal criticism, the record further demonstrates that due process was not afforded Petitioner due to the Trial Court of Judge Bernardi being an interested and biased tribunal. Further, as a result of the Fourth District Appellate Court arbitrarily depriving Petitioner of the common-law right to further clarify and reiterate his opening issues in his reply brief, (Appendix B), Kus v. Sherman Hosp., (2nd Dist. 1990), 204 Ill.App.3d 66, at 71-72, 561 N.E.2d 381, at 383-384, these issues are hereby brought forth.

The Illinois common-law policy, as established by the precedent of the First District Appellate Court, has determined that any interest of which the probable

and natural tendency is to create a bias in the mind of a judge for a person or against a party to a suit is sufficient to disqualify a judge; in addition, the First District did also determine that Easterhouse was denied the right to a fair trial and a fair decision before a fair and impartial tribunal as a result of being adverse parties in a civil lawsuit Easter House v. DCFS, (1st Dist. 1990), 204 Ill.App.3d 312, at 316-317, 561 N.E.2d 1266, at 1268-1269.

Therefore, tested by the aforesaid common-law policy, and with Trial Court of Judge Bernardi possessing a [past or current] business relationship with the Strong, Blakeman, and Schrock Law Firm (C. 8, Appendix E, page 3), and with the Petitioner and the husband of Respondent, Mr. James K. Cutler, concurrently becoming adverse parties in an Alienation Of Affection civil lawsuit, (Case No.,

4-92-0719, in the Fourth District Appellate Court), and with the Strong, Blakeman, and Schrock Law Firm representing Mr. Cutler in the said civil law suit, it is obvious that Mr. Cutler, who initially did prepare the marital settlement agreement herewith (R. Vol. II, p. 2-4), does possess a personal and a financial interest in the outcome of this proceeding and will be substantially affected by the outcome Easter House v. DCFS, (1st Dist. 1990), 204 Ill.App.3d 312, at 316-317, 561 N.E.2d 1266, at 1268-1269.

To further clarify on this matter, the U.S. Court of Appeals for the Seventh Circuit has precedented that Agency and Partnership Law has well settled the principle that confidential information, and any other interests, possessed by one member of a law firm, have the effect of affecting the entire membership, due to any information presumptively possessed

by the one member would be imputed to the other members of the firm; therefore, if one member of a law firm has information concerning a client obligation, the entire membership of the firm is endowed with the same information SCA Services Inc. v. Morgan, U.S. Court of Appeals, 1977), 557 F.2d 110, at 114-115.

In addition, the precedent of the First District Appellate Court of Illinois has established the common-law policy that to establish that there is a denial of the right to trial by an impartial trier of fact, a party has the burden of rebutting the presumption of impartiality by proving that the nature of the Trial Judges aquaintanceship with someone involved in the case is substantial enough to make unfairness probable People v. Anderson, (1st Dist. 1990), 95 Ill.App.3d 143, at 147, 419 N.E.2d 472, at 475. Therefore, as a result of the Respondent and Mr. Cutler

possessing a third degree business relationship with the Trial Court of Judge Bernardi through the Strong Blakeman & Schrock Law Firm, and with the Schrock Law Firm representing the Petitioner on this appeal, in addition to the high probability that the Trial Court of Judge Bernardi did possess a pecuniary interest in ruling against Petitioner so as to maintain a high level of client contributions to the Strong, Blakeman, and Schrock Law Firm, this aquaintanceship is hereby substantial enough to make unfairness probable Ward v. Village of Monroeville, Ohio, (1972), 409 U.S. 57, 93 S. Ct. 80, at 83. Furthermore, this interest and the relationship may be the contributing factor as to why the Trial Court did suppress all evidence that Petitioner bought forth concerning Mr. James K. Cutler and the issue of his involvement in this proceeding (C. 5, entry

9/24/93, C. 278-279, C. 283-285, C. 341, 344-346, R. Vol. II, p. 3, R. Vol. IV, p. 40-41, p. 50, R. Vol. V, p. 66).

Further, the precedent of the First District Appellate Court of Illinois has additionally set forth the common-law policy that because due process of law presupposes a fair and impartial hearing before a fair and impartial tribunal, no man who has a personal interest in the subject matter of a decision in a case may sit in judgment on that case, and such a personal interest need not be pecuniary, but need only be an interest which can be viewed as having a potentially debilitating effect on the impartiality of the decision maker. Easter House v. DCFS, (1st Dist. 1990), 204 Ill.App.3d 312, at 316-317, 561 N.E.2d 1266, at 1268-1269.

As a result of the aforesaid precedent, and to make easy work of Petitioners' defeat on appeal, the Trial Court of Judge

Bernardi must first circumvent matters to prevent Petitioner from even bringing forth an appeal. This is demonstrated by Petitioners' failure in his first attempt to bring this matter before the Appellate Court (Case No. 4-93-0343 in the Fourth District Appellate Court) where the Trial Court did deny Petitioner access the 91-D-62 file (C. 539).

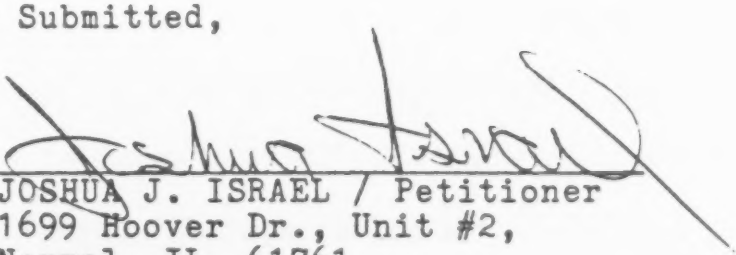
While the Trial Court of Judge Bernardi did recuse himself from further proceedings in this matter, the recusal has come much to late (C. 8, entry 6/14/93). Further, with the Schrock Law Firm now having an interest in the outcome of this proceeding, and maintaining a [relationship] with the Trial Court of Judge Bernardi, this Court has declared that every procedure which would offer a possible temptation to the average man, as a judge, not to hold the balance nice, clear, and true between the State and a party to an action denies the

latter the constitutional safeguard of due process of law; further, this Court has additionally declared that to perform its high function in the best way, "justice must satisfy the appearance of justice" In Re Murchison, (1955), 349 U.S. 133, 75 S. Ct. 623, at 625

CONCLUSION

As a result of the aforesaid reasons, and in the interest of justice, and to further advance the legitimate governmental purpose of assurance that the constitutional safeguard of equal protection of the laws and due process of law shall not be denied to any protected citizen of the United States, Petitioner does pray that this Court will issue writ of certiorari and review the opinion below.

Respectfully Submitted,

By: 

JOSHUA J. ISRAEL / Petitioner
1699 Hoover Dr., Unit #2,
Normal, IL. 61761
(309) 452-5202

Dated: July 12, 1994

APPENDIX A

No. 76765

IN THE
SUPREME COURT OF ILLINOIS

April 27,1994

IN RE MARRIAGE OF ISRAEL:)
)
JUDY L. ISRAEL,)
Respondent)
and,)
)
JOSHUA J. ISRAEL,)
Petitioner)

THE COURT HAS TODAY ENTERED THE FOLLOWING ORDER IN THE CASE OF:

No. 76765 - Judy L. Israel, respondent, v. Joshua J. Israel, petitioner.

The motion by petitioner for stay of mandate pending petition for writ of certiorari in the United States Supreme Court is denied.

JH:1gr
cc: Justice Miller
Mr. Alan M. Schrock

APPENDIX A

No. 76765

IN THE
SUPREME COURT OF ILLINOIS

April 6, 1994

IN RE MARRIAGE OF ISRAEL:)
)
JUDY L. ISRAEL,)
Respondent)
and,)
)
JOSHUA J. ISRAEL,)
Petitioner)

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on April 28, 1994.

APPENDIX B

No. 4-93-0415

IN THE APPELLATE COURT OF ILLINOIS

FOURTH DISTRICT

May 9, 1994

IN RE MARRIAGE OF:

JUDY L. ISRAEL,
Petitioner-Appellee,

and,

JOSHUA J. ISRAEL,
Respondent-Appellant.

NOTICE:

I have today issued mandate of this court in the above entitled cause, pursuant to Supreme Court Rule 368.

DARRYL PRATSCHER, Clerk
Appellate Court
Fourth District

TO: Joshua J. Israel
1699 Hoover Drive,
Unit #2,
Normal, IL 61761

Alan M. Schrock
Strong, Blakeman & Schrock, Ltd.
307 West Washington Street
Pontiac, IL 61764

Sandra K. Parker (with mandate)
Circuit Clerk, Mclean County

The Honorable Donald D. Bernardi
(With information copy of Mandate)
424 Law & Justice Center
104 West Front Street
Bloomington, IL 61701

APPENDIX B

No. 4-93-0415

IN THE APPELLATE COURT OF ILLINOIS

FOURTH DISTRICT

May 9, 1994

IN RE MARRIAGE OF ISRAEL:)
)
JUDY L. ISRAEL,)
Petitioner-Appellee,)
and,)
)
JOSHUA J. ISRAEL,)
Respondent-Appellant.)

TO COUNSEL:

The Court today denied the petition for rehearing filed in the above entitled cause.

The mandate of this court will issue in 7 days to the Clerk of the Circuit Court unless an affidavit of intent to seek review in the Illinois Supreme Court (Rule 368 (b) is filed in this court.

DARRYL PRATCHER, Clerk
Appellate Court
Fourt District

TO: Joshua J. Israel
1699 Hoover Drive,
Unit #2,
Normal, IL 61761

Alan M. Schrock
Strong, Blakeman & Schrock, Ltd.
307 West Washington Street
Pontiac, IL 61764

APPENDIX B

No. 4-93-0415

IN THE APPELLATE COURT OF ILLINOIS

FOURTH DISTRICT

Filed: November 17, 1993

IN RE MARRIAGE OF:)
)
JUDY L. ISRAEL,)
Petitioner-Appellee,)
and,)
)
JOSHUA J. ISRAEL,)
Respondent-Appellant.)

Appeal from Circuit Court of Mclean County
No. 91-D-62;
Honorable, Donald D. Bernardi, Judge
presiding.

ORDER

Respondent, Counter-Petitioner, JOSHUA J. ISRAEL, (hereinafter Respondent) brought this pro se appeal from a judgment of the circuit court of McLean County dissolving the marriage of Respondent, and Petitioner, Counter-Respondent, Judy L. Israel, n/k/a/

Judy L. Cutler, (hereinafter Petitioner), and distributing the assets of the parties. The principle dispute concerns the condominium which was the marital residence. The parties were married on August 13, 1987. Prior to residing in the condominium, the parties lived for six months in a home which Petitioner had owned for 16 years. On February 7, 1988, the house was destroyed by fire. Insurance proceeds amounted to $49,500 for the house and $30,000 for personal property. The condominium was purchased entirely with the insurance proceeds at a price of $49,500. Unlike the house, the condominium was held in joint tenancy. The parties separated on January 25, 1991. After the dissolution proceedings were initiated, and before either party was represented by an attorney, Respondent executed a quitclaim deed of his interest in the condominium to Petitioner. The parties also executed

a property settlement agreement which provided that Petitioner receive the condominium. Subsequently, respondent challenged the validity of the documents. Although the condominium had been sold, one-half of the proceeds from the sale were placed in escrow pending the court proceedings. After an evidentiary hearing, the trial court ruled that the property settlement agreement was valid and incorporated it into the judgment.

On appeal, Respondent asks this court to decide whether the findings of the trial court with regard to the validity of the property settlement agreement were against the manifest weight of the evidence. Respondent argues that (1) the condominium was marital property, (2) the deed he signed and the property settlement agreement were invalid and the property settlement agreement was unconscionable because he was induced to sign them by fraud or duress,

and (3) the property settlement agreement was not a valid contract since it was not supported by adequate consideration.

We affirm.

In his reply brief, Respondent raises for the first time on appeal allegations of improprieties by the trial judge which Respondent alleges to be violations of the Code of Judicial Conduct. (134 Ill. 2d Rules 61 through 67). The argument in a reply brief is to be confined strictly to replying to the argument in the appellee brief. (134 Ill.2d, R. 341(g). Issues raised for the first time will be waived and will not be considered on appeal. 134 Ill.App.3d 216, 222, 491 N.E.2d 826, 829.

The marital settlement agreement stated (1) the parties had no children; (2) in consideration of the other terms of the agreement, Petitioner waived any right to spousal support from Respondent; (3)

the condominiun, to which Respondent had released all rights, title and interest, was to be the property of Petitioner and she was to be responsible for and hold Respondent harmless for any expense and taxes with respect thereto: (4) Petitioner was receive (a) a 1990 Mitsubishi Montero four wheel drive automible, (b) a 1979 Buick Regal automobile, (c) a 1988 Kawasaki motorcycle, and (d) all other personal property previously divided by the parties and in her possession; (5) Respondent was to get a 1990 Pontiac Grand Prix automobile and all of the previously divided personal property in his possession; (6) each was to assume the debts and encumbrances on the vehicles that they received; and (7) all financial obligations, debts and expanses incurred during the marriage had been divided between the parties to their mutual satisfaction and each was to hold the other harmless. Petitioner testified

that after the parties separated, the property was amicably divided. She helped the Respondent locate an apartment, brought him furniture, and he moved out. As to the personal property, he took what he wanted, and she kept the rest. They each kept their own cars. She prepared the marital settlement agreement. They met at Champion Federal on February 2, 1991, to sign the document and have the signatures notarized. A week after he moved out, she had given him a copy of that document. They had discussed property distribution before, and the document contained exactly what they had agreed upon.

After the house had burned, she purchased personal property and gave Respondent $10,000. In January 1991, the quitclaim deed was executed. According to the Petitioner, Respondent knew exactly what he was signing because they went to the attorney together. He agreed to it

because the entire price of the condominium was derived from the insurance proceeds from the loss of the house.

At the time they lived in the house, Respondent had nonmarital personal property, some of which was lost in the fire. The value of it was between $2000 and $3000. However, she gave him $10,000 from the insurance proceeds for his personal property loss.

Petitioner had been previously divorced. Respondent had not gone through a divorce before. The parties were amicable even after seperation, and the relationship between the parties did not deteriorate until about a month after the property settlement agreement was signed on February 2, 1991. She was in no hurry to get a divorce, but he told her to "go ahead." The petition for dissolution of marriage was filed on February 4, 1991.

On appeal, the Petitioner ignores

the Respondent's argument concerning whether the condominium was marital property and asserts that, regardless of whether it was marital property, the marital settlement agreement was nevertheless valid. The failure to file a brief responsive to an issue raised is equivalent to the failure to file a brief at all in that, if the appellant demonstrates a prima facie error as to that issue, the trial court's judgment may be reversed. (Handley v. Unarco Industries, Inc. (1984), 124 Ill.App.3d 56, 68, 463 N.E.2d 1011, 1021 (wherein the cross-appellee failed to file a brief responsive to the issues raised in the cross-appeal). On review, the trial court's determination of whether property is marital or nonmarital will be overturned if it is against the manifest weight of the evidence. (In Re Marriage Of Simmons, (1991), 221 Ill.App.3d 89, 92, 581 N.E.2d 716, 719). A finding of fact is against

the manifest weight of the evidence if, from a review of the record, it is evident the contrary conclusion is the proper result or the finding is unreasonable, arbitrary, and not based on any evidence. Maple v. Gustafson, (1992), 151 Ill.2d 445, 454, 603 N.E.2d 508, 512-513; Stone v. City of Arcola, (1989), 181 Ill.App.3d 513, 530-531, 536 N.E.2d 1329, 1340.

The Condominium was purchased totally with insurance proceeds obtained after the destruction of her house, and the house was clearly nonmarital property. (Ill. Rev. Stat. 1991, ch. 40, par. 503(a)(6). The insurance proceeds were, therefore, nonmarital property. (Ill. Rev. Stat. 1991, ch. 40, par. 503(a) (2). However, the condominium was placed in joint tenancy and was, therefore, presumed to be marital property. Ill. Rev. Stat. 1991, ch. 40, par. 503(b).

The fact Petitioner intended a gift

of one-half of the condominium to Respondent is established by her own testimony. The trial judge, in finding that the condominium was nonmarital, relied on the Petitioner's testimony that she intended to provide for Respondent in the event of her death. The placing of the marital residence in joint tenancy creates a presumption of a gift which Petitioner has not overcome. Under the facts presented, to hold, as did the trial court, that Petitioner had no donative intent, would vitiate the statutory presumption that property held in joint tenancy is marital property.

There is no evidence of fraud, duress or undue influence on the part of Respondent or any other defense which would suggest that the placing of the condominium in joint tenancy was anything other than a gift. Although a determination the condominium was marital property is not dispositive, the trial court's finding

that the condominium was nonmarital is against the manifest weight of the evidence.

With regard to the validity of the settlement agreement, section 502 of the Illinois Marriage and Dissolution of Marriage Act allows for the parties in dissolution of marriage proceedings to enter into written or oral settlement agreements.

Ill. Rev. Stat. 1991, ch. 40, par. 502(a).

> "The terms of the agreement, except those providing for the support of children, are binding upon the court unless it finds, after considering the economic circumstances of the parties and any other relevant evidence produced by the parties, on their own motion or request of the court, that the agreement is unconscionable." (Ill. Rev. Stat. 1991, ch. 40, par. 502(b).

Unless the agreement provides otherwise, the terms of the agreement are to be made part of the judgment. (Ill. Rev. Stat. 1991, ch. 40, par. 502(d). If the trial court finds the agreement

to be unconscionable, the court may order a property or request that the parties rewrite the agreement. (Ill. Rev. Stat. 1991, ch. 40, par. 502(c). In addition, the court may set aside an agreement if it was entered into as a result of fraud, coercion or duress, or the agreement was contrary to public policy or morals. In Re Marriage of Holderrith, (1989), 181 ILL.App.3d 199, 206, 536 N.E.2d 946, 951. In order to establish that a settlement agreement resulted from fraud, coercion or duress, the evidence presented at trial must be clear and convincing, but the question on review is whether the findings of the trial court are against the manifest weight of the evidence. In Re Marriage of Smith, (1987), 164 Ill.App.3d 1011, 1017, 518 N.E.2d 450, 454.

The terms of the marital settlement agreement in this case are not one-sided and oppressive. Respondent got to keep

the property that was in his possession, even though Petitioner helped furnish his apartment when he moved out. This was a marriage of relatively short duration, and each party left the marriage with the property they brought with them, or substitutes therefor. Respondent made no contributions toward the acquisition of the condominium. Neither party had legal counsel at the time of entering into the agreement. Merely because Petitioner had been divorced previously is not a sufficient advantage to render the agreement unconscionable. Indeed, Respondent said he understood the agreement when he signed it, but did not care. Nor do the economic circumstances of the parties resulting from the agreement require a finding of unconscionability. Both parties are employed at Pontiac Correctional Center, and Respondent can support himself. Indeed, had it not been for Petitioner paying his

debts, giving him money, and purchasing personal property for him, Respondent's financial condition would have been less favorable. Merely because the distribution of property in the agreement is not mathematically equal does not render the agreement unconscionable. (In Re Marriage of Flynn, (1992), 232 ILL.App.3d 394, 400, 597 N.E.2d 709, 713). A party to such agreement cannot have it declared invalid simply because he changed his mind. (In Re Marriage of Flynn, (1992), 232 ILL.App.3d 394, 402, 597 N.E.2d 709, 714).

Respondent contends that fraud and duress were utilized by Petitioner in getting him to sign the deed and enter into the settlement agreement. Fraud is the intentional misrepresentation of a material fact or concealment of such a fact which was intended to and did induce the opposing party to rely on the

misrepresentation to his detriment. (In Re Marriage of Gurin, (1991), 212 Ill.App.3d 806, 813, 571 N.E.2d 857, 862. Respondent has not proved fraud. The trial court could reasonably find that Respondent fully understood that, by signing the deed and agreement, he was completely relinquishing all claims to the condominium. Respondent's testimony disclosed no material misrepresentation. It is Respondent's theory that Petitioner's silence on the legal effect of the documents was the misrepresentation. The parties went together to the attorney to have the deed prepared. When Respondent signed the settlement agreement, he understood its terms, but did not care. There was no fraud.

The duress and undue influence to which Respondent refers in this case did not consist of force or threats of force. He argues Petitioner exercised undue

influence over him and took advantage of his emotional state. At the time Respondent signed the property settlement agreement, he had moved out of the marital residence, had urged Petitioner to file for divorce, and knew she was cohabiting with another man. The trial court certainly could find that no relationship of faith and trust existed between the parties at the time such the Respondent was in a position that he could not refuse to accede to the will of Petitioner. Nor did the evidence require the trial court to find that the agreement was "hastily contrived." It was prepared by Petitioner and given to Respondent to read. He had an opportunity to take it to an attorney to seek advise, but did not. As for the emotional stress Respondent claimed to be under, the trial judge heard the evidence and determined that no duress occurred which would invalidate the agreement.

These findings of the trial court are not against the manifest weight of the evidence.

Finally, Respondent argues there was insufficient consideration to support the property settlement agreement as a contract. "It is a fundamental rule of law that a valuable consideration consists of some right, interest, profit or benefit accruing to one party, or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other." (Lipkin v. Koren, (1946), 392 Ill. 400, 406, 64 N.E.2d 890, 893). The determination of whether there was sufficient consideration to support the contract of the parties is implicit in the trial court's resolution of whether the agreement was so one-sided as to be unconscionable. Here, Respondent received all his personal property and was held harmless on all debts of Petitioner. In addition, Petitioner agreed to forgo any

claim of maintenance. This is sufficient consideration to support the agreement. There was evidence before the trial court that Respondent wanted to divide the property just as was done and to get on with his life without Petitioner. There was sufficient consideration to support the agreement, and the trial court's finding was not against the manifest weight of the evidence.

For the foregoing reasons, the judgment of the circuit court of McLean County is affirmed.

Affirmed.

McCULLOUGH, J., with LUND and GREEN, JJ., concurring.

APPENDIX C

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT
COUNTY OF McLEAN

IN RE THE MARRIAGE OF:)
JUDY L. ISRAEL,)
Petitioner/Counter-Respondent,)
)
and)
)
JOSHUA J. ISRAEL,)
Respondent/Counter-Petitioner.)

Case No. 91-D-62

Filed: April 12, 1993

ORDER

This cause having come on for hearing on February 18, 1993, and the Petitioner appearing by Mr. Jerry Raymer and the Respondent appearing pro se and the Court having heard the evidence and arguments regarding marital settlement agreement executed by the parties on February 2, 1991, hereby finds as follows:

1. This Court has heard evidence from the parties as to whether a marital

settlement agreement entered into between the parties should be made part of a Supplemental Judgment of Dissolution under 750 ILCS 5/502.

2. The Court finds that the parties were married on August 13, 1987, and that they separated on or about January 25, 1991. The Court finds that the Petition for Dissolution of Marriage was filed on February 4, 1991, and Judgment of Dissolution was entered on October 15, 1991.

3. The Court finds that the Petitioner owned property in the City of El Paso for a total of 16 years and lived there with the Respondent for 4 months after their marriage and that the residence was destroyed by fire on February 7, 1988. The Court finds that the Petitioner was allowed $49.500 for the property lost and an additional $30,000 for personal property, said ammounts having been reimbursed by

insurance coverage. The Court finds that the Respondent had no interest in the property in El Paso and that it was clearly non-marital property at the time it was destroyed by fire. The Court further finds that the Respondent suffered losses in the fire but that the Respondent received from Petitioner $10,000 in cash subsequent to the fire, $5,000 to pay off a car which was then used to purchase the vehicle he now owns and finually an additional $1, 900 during the course of the marriage for a total of $16, 900. The Court finds that these amounts greatly exceed the value of the property lost by Respondent in the fire and cannot be considered as compensation for the loss of personal property by the Respondent.

4. The Court finds that the Petitioner purchased a condominium with the proceeds of the insurance money and that the condominium was placed in joint tenancy

by the Petitioner. Her testimony indicated that she did this so that the Respondent would have something in case she were to pass away. The Court further finds that on Jenuary 22, 1991, the Respondent as part of the marital settlement agreement which is the subject of this order signed a quit claim deed transferring any interest he may have in the condominium back to the Petitioner.

5. The Court finds that the petitioner subsequently sold the property in Normal, Illinois, and purchased additional property in Chenoa and that by order of this Count entered May 24, 1991, one half of the proceeds of that sale were to be held into escrow until the Court rules on the remaining issues in this case.

6. The Petitioner is asking the Court to enter the marital settlement agreement prepared by the parties and asking for a finding from the Court that it is an

appropriate disposition of property and not unconscionable. The Respondent argues that the Petitioner induced him into signing the agreement under the circumstances indicating fraud and duress and secondly, that in any event, the marital settlement agreement is an unconscionable distribution of property.

7. The Court has reviewed the Respondent's allegation that duress and/or fraud is involved in inducing him into entering into the marital settlement agreement. Duress has the following definition, "A condition where one is induced by a wrongful act or threat of another to make a contract under circumstances which deprive him of the exercise of his free will." Towne v. Town of Libertyville, 190 Ill.App.3d 563, (1989). The Court further notes that it is not duress to institute or threaten to institute legal actions, nor is it duress for a person

to assert his legal rights. Ibid The Ccurt further finds that wrongfulness which is the basis for duress is not limited to criminal, tortious, or acts in violation of a contractual duty, but may extend to acts that are wrongful in the moral sense. Kaplan v. Kaplan, 25 IL.2d 181, 186. Enslen v. Village of Lombard, 128 Ill.App.3d 531 (1984). The Court in Enslen went on to note that duress does not exist where consent to an agreement is secure because of hard bargaining positions or the pressure of financial circumstances unless the conduct of the party obtaining the advantage is shown to be tainted with some degree of fraud or wrongdoing.

8. The Court has reviewed the evidence presented by the Respondent which he claims establish the duress or fraud in this case. The Court finds that the argument that the agreement was entered into under circumstances of duress or fraud is without

merit. The Respondent testified that the fraud and duress related specifically to his own personal principles and beliefs. It was the Respondent's position that the acts of the Petitioner in leaving him for another man and in effect living with that individual cuased an irretrievable breakdown of the marriage relationship. The Respondent also testified that he didn't understand the marital settlement agreement and that the issues were small compared to what he felt at the time the marriage broke down. The Respondent also went on to explain that at the time he signed the quit claim deed and the agreement he had already moved out of the marital residence and things were "good." The Respondent indicated that shortly before actually signing the marital settlement agreement there was another breakdown when he found that the Petitioner was residing with another man. The Respondent then testified

that signing the marital settlement agreement was an act which he thought would be "hurting her." The Court finds that the Respondent did not explain what there was in the marital settlement agreement that was difficult for him to understand. A review of the agreement would indicate that it is quite straight forward, essentially allowing the parties to retain the property in their possession at the time of the agreement. The Court finds that this agreement cannot be set aside under contract principles defenses such as fraud and duress since it is clear there was no fraud or duress acting upon the Respondent at the time he entered into the agreement or signed the quit claim deed.

9. The second issue raised by the Respondent is relating to the unconscionability of the agreement itself. It is the Court's position that even though

the agreement itself is a binding contract the Court may still set it aside under 5/502 if it is found to be unconscionable.

10. In order to determine whether the agreement is unconscionable the Court must make some decisions regarding the value of the marital property. The Court finds that the major issue is whether or not the proceeds of the sale of the residence in Normal should be determined to be marital and a portion distributed to the Respondent by the Court. The Court finds that the funds used to acquire the property in Normal came from non-marital property owned by the Petitioner for 16 years prior to her marriage to the Respondent. The Court further finds that the Petitioner's act of placing that property into joint tenancy did not constitute a gift but was an appropriate way to provide for Respondent in the event of her death. The Court finds that the

quit claim deed executed January 22, 1991, was clearly a free voluntary act by Respondent and would be clear evidence of his intent to transfer the property back to the Petitioner as part of the marital settlement agreement which mentions the quit claim deed as part of the settlement. Although the Court does not find that the acts of the Petitioner transform the property into marital property, the Court believes that it would be useful to presume such as were the case in determining whether or not the settlement agreement was unconscionable. If the condominium was determined by this Court to be marital and if an appropriate distribution would be one-half to each party, then the amount owed to the Respondent would $24,750. The Court finds that the Respondent has received monies from the Petitioner in the total ammount of $16,900 since the time of the fire

shortly after the marriage. The Court does not find that the explanations offered by the Respondent for the transfer of these funds would be sufficient to exclude them from any division of the marital assets if the Normal property were determined to be marital in nature. The shortfall owed to the Respondent even if the Court presumes the property to be marital is only $7,850. The Court finds that the $16, 900 transfered to the Respondent during the course of the marriage more tan adequately compensates him for the relatively minor loss in the fire. Therefore, the Court cannot find based upon the amount of money transferred during the marriage and the clear non-marital nature of the residence occupied by the parties at the time of the fire in 1988, that the marital settlement agreement is unconscionable.

Therefore, the Court hereby approves

the marital settlement agreement entered into between the parties on February 2, 1991, and the Petitioner is hereby ordered to prepare a Supplemental Judgment of Dissolution setting forth the property division within that agreement.

Dated: April 8, 1993

DONALD D. BARNARDI
Associate Circuit Judge

APPENDIX D

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF ILLINOIS

JOSHUA ISRAEL,)

Plaintiff,)

vs.)

HON. DONALD D. BERNARDI, et al.,)

Respondents.)

Case No. 92-1215

Filed: June 15, 1992

ORDER

The Petitioner, JOSHUA ISRAEL, is in the process of divorcing his wife. Evidently dissatisfied with the progress of the proceedings in state court, Israel has filed a pro se petition for removal' of case to federal court. Included as defendants in this action are the presiding state judge, the Petitioner's former attorney, and counsel for Petitioner's

estranged wife. The Respondent, Jerry raymer, has filed a motion for remand. For reasons stated in this order, the petition for removal will be denied and the case will be remanded to state court.

This court has examined the pleadings and finds that the Petitioner's attempt to remove the state court proceedings to this court must fail for a number of reasons. The Petitioner has failed to comply with the Federal rules' timeliness and bond requirements. In addition, the court discerns no federal question, no diversity of citizenship, nor any legitimate racial ¶

'The "petition" is a misnomer. The proper procedure for removal is to file a "notice" of removal pursuant to 28 U.S.C. § 1446(a).

¶ equality claim. The federal courts do not hear domestic relations cases.

First, regardless of whether the

subject matter of this case makes the suit appropriate for removal under 28 U.S.C. § 1443(1), the Petitioner has failed to comply with the procedural requirements for removal. According to Federal Rules of Civil Procedure:

> The notice of removal of a civil action or proceeding shall be filed within thirty days after the receipt by the defendant, through service of otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within thirty days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.

28 U.S.C. § 1446(b) (emphasis added). According to the Respondent, in the instant case divorce proceedings were initiated on February 4, 1991; the Petitioner did not attempt to remove the case until May 5, 1992, well over a year later. Additionally the Plaintiff has failed to

meet the bond requirements of 28 U.S.C. § 1446(d).[2]

There are more fundamental reasons why Israel's petition fails to establish jurisdiction. A civil action brought in state court mat be removed to a federal district court if the federal court would have had original jurisdiction to entertain the action. See 28 U.S.C. § 1441(a). Here the underlying action is ¶

---

[2]Although the file does not indicate that the respondents were given formal notice of the removal, the respondents somehow became aware of the removal, as evidenced by Raymer's motion to remand.

¶ one for the dissolution of a marriage. It is well established that federal courts lack jurisdiction to grant a divorce or annulment, determination support payments, or award custody of children. See, generally, Lloyd v. Loeffler, 694 F.2d 489, 492, (7th Cir. 1982) (noting

"potential for inconsistant decrees" and to possibility of "piecemeal, duplicative, or inexpert handling of a domestic dispute"); see also, Vaughan v. Smithson, 883 F.2d 63, 64, (10th Cir. 1989) (per curiam); In re Burris, 136 U.S. 586, 593-94, (1890) ("[t]he whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the States and not to the laws of the United States"); Barber v. Barber, 62 U.S. (21 How.) 582, 584, (1858).

Israel attempts to invoke the district court's jurisdiction by making the conclusory claim that he is being denied his constitutional rights in the dissolution proceedings. See 28 U.S.C. § 1443. However, Section 1443 applies to denials of specific rights of racial equality and not to the whole gamut of constitutional rights. United States ex rel. Sullivan v. State, 588 F.2d 579, 580, (8th Cir.

1978) (per curiam) (citing Georgia v. Rachel, 384 U.S. 780, 792 (1966).

The Petitioner charges that "McLean County has a secret law that forbids the equal distribution of marital property to black males who marry white females during divorce actions." However, the Plaintiff's assertion is wholly unsupported by allegations of facts and insufficient to convert the divorce proceedings into a civil rights case. (After reviewing the matter and performing some basic legal research, the Plaintiff may wish to file a seperate lawsuit challenging discriminatory practices in the McLean County court system, subject to Rule 11 sanctions for frivolous pleadings). Furthermore, the Petitioner's references to statutes regarding diversity jurisdiction and suits against state and federal officials are inapplicable to the instant case. In the Petitioner believes that

the trial court has made improper decisions, then the appropriate procedure for review is through the appeal process.

The Rules also provide that, upon a finding that removal was improper, the Court may order the payment of just costs. See 28 U.S.C. § 1447(c). Upon review of the record, and in consideration of the fact that the Petitioner was proceeding pro se, the court declines to award costs in this matter.

IT IS FURTHER ORDERED that the Respondent's motion to remand (docket #3) is allowed. This cause is remanded to the McLean County Circuit Court of the Eleventh Judicial Circuit.

Enter this 15th day of June, 1992.

MICHAEL M. MIHM
CHIEF U.S. DISTRICT JUDGE

APPENDIX E

Law Offices
STRONG, BLAKEMAN, & SCHROCK, LTD.
307 West Washington Street
Pontiac, Illinois 61764-1792
Telephone (815) 844-6177
Facsimile (815) 842-3288

Dated: September 20, 1993

State of Illinois Appellate Court
Fourth District
Supreme Court Building
Springfield, IL 62701-1792

In re: Israel vs. Israel
General No. 4-93-0415
McLean County No. 91-D-62

Gentleman:

The undersigned is attorney of record for Judy L. Israel, now Judy L. Cutler, Petitioner-Appellee in the above identified appeal. I today received copies of the Appellant's Reply Brief and Motion to Strike Brief and Argument of Petitioner-Appellee. This letter is written for the purpose of responding to the Motion and certain of the allegations contained in the Reply Brief.

With respect to the Motion filed by the Appellant, there is no question that the appellee's Brief was properly filed on a timely basis and should be considered by the Court. The undersigned as Attorney for the Appellee had previously entered an appearance in this proceeding, and I am enclosing a copy of the Receipt for payment of the appearance fee in substantiation. While the Appellant alleges several points of objection to the form of the Appellee's Brief, the Brief is in compliance with Supreme Court Rules and should be duly considered by this Court. Accordingly, the Appellee prays that the Motion be summarily denied.

While the Appellee recognizes that no right exists under the applicable rules to respond to the Appellant's Reply Brief, there are certain allegations contained in the Reply Brief which the undersigned attorney believes are inaccurate and

improper and should be brought to the attention of this Court. Much of the Appellant's Reply Brief consists of allegations of impropriety on part of Judge Donald Bernardi and, by implication, the undersigned attorney. As is shown on the record, the undersigned did not take the representation of the Appellee until such time as Judge Bernardi had entered the Judgment from which the Appellant has appealed. Thereafter, after this appeal was taken by Appellant due to motions pertaining to the record filed in the trial court, the undersigned did appear on behalf of the Appellee and Judge Bernardi did recuse himself. Judge Bernardi indicated on the record that he routinely recuses himself from cases involving this law firm due to past business relationships with the law firm. This law firm, by my partner, C. Thomas Blakeman, has occasionally represented Judge Bernardi

on individual matters, both prior to his appointment as Associate Judge and thereafter. Accordingly his recusal is in accordance with all ethical standards.

However, the Appellant implies in his Reply Brief that the employment of the undersigned as attorney for Appellee was contemplated at an earlier time and that somehow the undersigned used influence upon Judge Bernardi to affect his decision in this case. Such allegations imply impropriety on part of both Judge Bernardi and myself and are without basis. While I had some general knowledge that a dissolution proceeding was pending between the parties as I had represented the Appellee's current spouse, I had no involvement at the trial court level and was not contacted by Appellee about becoming involved with the case until after the trial court had made its ruling. I had no contacts whatsoever with Judge Bernardi

with respect to his case until after his ruling. My first contact with his office occurred after I was retained, when I contacted his office regarding a hearing to be held on the trial court record. At that time, my contact was solely with Judge Bernardi's staff, and I was advised by his staff immediately that due to my involvement, Judge Bernardi would be recusing himself. Thereafter, I attended a Court hearing on the record issue, at which time Judge Bernardi did recuse himself.

There is also an allegation at page 14 of the Reply Brief that this law firm benefitted financially by receiving $23,215.00, plus interest, from the Peoples Bank in Bloomington Escrow Account and by depositing same in this firm's business account. The Appellant also alleges that somehow Judge Bernardi received a financial benefit from his ruling as a result of

the alleged transfer of funds. However, neither the undersigned nor this firm ever received any funds for deposit with respect to this case, and had such funds been received for escrow purposes, such funds would have been deposited in a trust account rather than the business account. In any event, the Appellant is misinformed when he alleges that either this firm or the undersigned received the escrowed funds. In fact, the undersigned has never had any involvement whatsoever with respect to the funds escrowed during the trial court proceedings.

The undersigned takes very seriously allegations of impropriety against the undersigned or this law firm and, accordingly, I trust this letter will serve to substantiate to this Court that the allegations contained in the Appellant's Reply Brief of impropriety are frivolous and without absolutely no basis in fact.

I trust also that this Court will consider appropriate admonitions or sanctions against the Appellant for making the unfounded allegations.

Yours very truly,

STRONG, BLAKEMAN, & SCHROCK, LTD.

By _____
ALAN M. SCHROCK

AMS:sh

Enclosure

cc: Joshua J. Israel

APPENDIX F

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT
COUNTY OF McLEAN

IN RE THE MARRIAGE OF:)
)
JUDY L. ISRAEL,)
Petitioner/Counter-Respondent,)
)
and)
)
JOSHUA J. ISRAEL,)
Respondent/Counter-Petitioner.)

Case No. 91-D-62

Filed: May 24, 1991

TEMPORARY RESTRAINING ORDER

THIS CAUSE coming on to be heard on the petition of JOSHUA J. ISRAEL, for a Temporary Restraining Order, and the Court being fully advised in the premises;

IT IS HEREBY ORDERED as follows:

A. That one-half (½) of the net proceeds from the sale of the marital residence located at 903 North Linden

Street, Unit #121, Normal, Illinois shall be placed in an interest bearing account at The Peoples Bank of Bloomington until final settlement of the dissolution proceedings and shall only be removed upon Court authority or agreement by both attorneys.

ENTERED THIS 24th DAY OF MAY, 1991.

WAYNE C. TOWNLEY JR.
Judge

APPROVED AS TO FORM:

JERRY N. RAYMER
Attorney for Petitioner

ALICE F. SMALLEY
Attorney for Respondent